

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|------------------------|-------------|----------------------------|
| Seth Baker, et al., |) | No. 11-cv-00722-RSM |
| |) | |
| v. | Plaintiffs, | STIPULATION AND [PROPOSED] |
| |) | ORDER GRANTING PLAINTIFFS' |
| |) | MOTION TO DISMISS WITH |
| |) | PREJUDICE [DKT. 35] |
| Microsoft Corporation, |) | |
| |) | |
| | Defendant. | Noted for Consideration: |
| |) | October 5, 2012 |
| |) | |
| |) | |
| |) | |

STIPULATION

The parties, by and through their attorneys of record, stipulate to the Court's entry of the proposed Order set forth below, dismissing this case with prejudice, directing entry of judgment, and reserving questions of appealability. In support of this request, the parties represent the following:

1. Plaintiffs filed this action on April 28, 2011. *See* Dkt. 1.
2. On March 27, 2012, the Court entered its Order on Defendant's Motion to Strike Plaintiffs' Class Allegations, granting Microsoft's Motion to Strike. *See* Dkt. 32.
3. On June 12, 2012, the United States Court of Appeals for the Ninth Circuit entered an Order "in its discretion, den[ying] the [Plaintiffs'] petition for permission to appeal the district court's March 27, 2012 order."

1 4. On September 25, 2012, Plaintiffs filed a Motion to Dismiss with Prejudice.
2 *See* Dkt. 35. In that Motion, Plaintiffs explained that “[a]fter the Court has entered a final
3 order and judgment, Plaintiffs intend to appeal the Court’s March 27, 2012 order (Dkt. 32)
4 striking Plaintiffs’ class allegations.” *Id.*

5 5. Microsoft does not intend to oppose Plaintiffs’ Motion to Dismiss because Fed.
6 R. Civ. P. 41(a)(1)(A)(i) permits them to dismiss their case voluntarily. Microsoft does
7 contend, however, that Plaintiffs will have no right to appeal the Court’s Order striking
8 Plaintiffs’ class allegations after entry of their requested dismissal.

9 6. This Stipulation is not filed pursuant to a settlement agreement, nor was
10 Plaintiffs’ Motion to Dismiss filed pursuant to a settlement agreement. The parties have not
11 entered into any settlement of Plaintiffs’ claims.

12 7. Based on the foregoing, the parties stipulate and agree that the Court may enter
13 the following Order dismissing this matter with prejudice, reserving to all parties their
14 arguments as to the propriety of any appeal. Any arguments as to the propriety of an appeal
15 shall be addressed in the United States Court of Appeals for the Ninth Circuit, if and when
16 Plaintiffs file a notice of appeal.

17 Respectfully submitted this 5th day of October, 2012.

18 Davis Wright Tremaine LLP

19 By s/ Stephen M. Rummage

20 Stephen M. Rummage, WSBA # 11168
21 Fred B. Burnside, WSBA # 32491
22 1201 Third Avenue, Suite 2200
23 Seattle, Washington 98101-3045
24 Telephone: (206) 757-8136
25 Facsimile: (206) 757-7700

26 Charles B. Casper
27 John Papianou
28 Montgomery, McCracken, Walker & Rhoads, LLP
29 123 S. Broad Street
30 Philadelphia, PA 19109

31 Attorneys for Microsoft Corporation

KELLER ROHRBACK LLP

By s/ Amy Williams-Derry

Amy Williams-Derry, WSBA #28711
Mark A. Griffin, WSBA #16296
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900

CHITWOOD HARLEY HARNES LLP

Gregory E. Keller, WSBA #13040
Darren T. Kaplan
2300 Promenade II
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
Telephone: (404) 873-3900

KOPELOWITZ OSTROW FERGUSON

WEISELBERG KEECHL
Jeffrey M. Ostrow
200 S.W. 1st Avenue, 12th Floor
Fort Lauderdale, FL 33301
Telephone: (954) 525-4100

STRITMATTER KESSLER WHELAN
COLUCCIO

Paul L. Stritmatter, WSBA # 4532
Kevin Coluccio, WSBA # 16245
Brad J. Moore, WSBA # 21802
200 Second Avenue West
Seattle, Washington 98119
Telephone: (206) 448-1777

WASSERMAN COMDEN CASSELMAN &
ESENSTEN LLP

Melissa M. Harnett
Gregory B. Scarlett
5567 Reseda Blvd, Suite 330
Tarzana, California 91356
Telephone: (818) 705-6800
Facsimile: (818) 996-8266

Attorneys for Plaintiffs

ORDER

Based on the foregoing Stipulation, the Court GRANTS Plaintiffs' Motion to Dismiss with Prejudice, with all parties to bear their own costs and fees. The Court hereby directs the Clerk to enter Judgment accordingly and close this case.

IT IS SO ORDERED.

DATED this ____ day of October, 2012.

Ricardo S. Martinez
United States District Judge

Presented By:

Davis Wright Tremaine LLP
Attorneys for Microsoft Corporation

By s/ Stephen M. Rummage
Stephen M. Rummage, WSBA #11168
Fred B. Burnside, WSBA # 32491
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Telephone: (206) 622-3150
Fax: (206) 757-7700
E-mail: steverummage@dwt.com
fredburnside@dwt.com

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2012, the foregoing *Stipulation and Order Granting Motion to Dismiss with Prejudice* was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record who receive CM/ECF notification, and that the remaining parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 5th day of October, 2012.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Def. Microsoft Corporation

By s/ Stephen M. Rummage
Stephen M. Rummage, WSBA #11168
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Telephone: (206) 757-8136
Fax: (206) 757-7700
E-mail: steverummage@dwt.com